

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 562 of 2000

in

SPECIAL CIVIL APPLICATION No 8904 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BAR COUNCIL OF GUJARAT

Versus

VINOD HARJIVANDAS DIXIT

Appearance:

1. LETTERS PATENT APPEAL No. 562 of 2000
MR SURESH M SHAH with MR M.S. SHAH for the Appellant
MR SK JHAVERI for Respondent No. 1
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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

A lawyer - academician has suddenly found himself out-witted by the pure professionals and alienated by his fellow academicians landing himself in a state of suspended animation due to the professional territorialism seeking absolute loyalty in the respective fields.

2. In this appeal, the State Bar Council challenges the order of the learned Single Judge granting interim relief in favour of the respondent to a limited extent that the appellant shall not fill in the office of a member of Bar Council, which is said to have fallen vacant on account of the letter dated 12th July, 2000 written by the respondent, by which he informed the Chairman of the State Bar Council that he had ceased to practice law and that he was not practising as an Advocate in any Court of India, forwarding his declaration and the original Sanad to the Bar Council alongwith this letter.

3. In his petition, the respondent challenged the resolution dated 22.7.2000 of the Enrolment Committee resolving that in view of his application dated 12th July, 2000, stating that the respondent had ceased to practice as an Advocate, a casual vacancy had occurred under Rule 10 of The Gujarat Bar Council (Constitution and Conduct of Business) Rules, 1968 (hereinafter referred to as "the Conduct of Business Rules") and that the respondent who was an elected member of the Bar Council of Gujarat shall be deemed to be vacated his office with effect from 22.7.2000 under Section 10B of the Advocates Act, 1961. The respondent challenged the process undertaken for the purpose of filling up the vacancy, by the letter of the Secretary of the Bar Council dated 26.7.2000 written to all the members of the Bar Council pursuant to the said resolution and as directed by the Chairman of the Bar Council inviting nominations. It was mentioned in the said letter that the respondent was deemed to have vacated his office as an elected member of the Bar Council of Gujarat as provided under Rule 10 in Para III of the Rules of the Bar Council of India and that a casual vacancy had occurred in the Bar Council on the respondent having ceased to practice as an Advocate. An election notice was enclosed with this letter as provided by Rule 11 of the Gujarat Bar Council (Constitution and Conduct of Business) Rules, 1968. As per that election notice dated 26.7.2000, it was notified under Rule 11 of the said Conduct of Business Rules that the election of one member

will be held as per the time schedule notified therein which the last date for filing nomination was 8th August, 2000, for scrutiny 9th August, 2000, and for withdrawal of candidature 11th August, 2000. The election was to be held in the next meeting of the Bar Council of Gujarat as contemplated by Rule 11 of the Conduct of Business Rules. The prescribed nomination form was available from the office of the Bar Council as per the note below the said notice. The petition was presented on 14th August, 2000 and when it was circulated for admission hearing on 24th August, 2000, the learned Single Judge issued rule, making it returnable on 30.11.2000 and after hearing the parties, granted the aforesaid interim relief apprehending that an irreversible situation would otherwise arise if the Bar Council proceeds with the process of holding the election for filling in the said vacancy alleged to have arisen due to the respondent's letter and deposit of his Sanad.

4. The respondent started practising as an Advocate in June, 1968 and after about 3 years, joined as a Lecturer in Motilal Nehru Law College of this city. In January, 1989 he became the Principal of the college. In June, 1990, the Director of Higher Education, Gandhinagar approved his appointment as a Principal of the college with effect from 2.1.1989. In a separate development, the High Court rendered a decision on 16.7.1997 in Special Civil Application No. 10141 of 1996, directing that private law colleges be admitted to grant-in-aid scheme and a Government resolution in that regard came to be passed on 5.9.1997, authorising the Director to issue grants to the law colleges. According to the respondent, the Director insisted that he should surrender his Sanad for his inclusion in what is known as "Direct Payment Scheme" and for the grant being made admissible to the college. The respondent obtained an ad-interim relief against such insistence of surrender of Sanad in a separate petition (Special Civil Application No. 2356 of 2000). The learned Single Judge while issuing rule on that petition, granted ad-interim relief against the concerned authority, preventing the respondent from surrendering Sanad only on the ground that he was working full-time and clarifying that this ad-interim relief "would not and should not tantamount to direction to pay salary as a grantable service qua the petitioner". Against that order dated 27.4.2000, the respondent preferred LPA No. 152 of 2000, in which the Division Bench on 10.5.2000 while issuing notice on the Civil Application, ordered that in the meantime it will be appropriate for the concerned authorities to release the salary of the applicant, who had been serving since long

and was drawing his salary and that the concerned authority may release the salaries of the applicant which may be due till then, subject to the orders that may be made in the proceedings. This was done on the footing that according to the present respondent he was engaged in teaching law for three hours and therefore, should be deemed to be a part-time teacher. Thereafter, on 20th May, 2000, the Director issued an order including the name of the respondent under Direct Payment Scheme as stated in paragraph 3.3 of the petition. However, no further action was taken and, instead, the entire grant of the college was with-held by the Director insisting that until the respondent surrendered his Sanad, the grant will not be released. The Director cancelled the earlier order of inclusion of the name of the respondent under the Direct Payment Scheme. This put the management into a precarious condition and in order to come out of it, the management required the respondent to surrender his Sanad with an arrangement that he would be allowed to voluntarily retire. According to the respondent, it was in this background that he had to deposit his Sanad on 12th July, 2000 with the State Bar Council and these circumstances were placed on their record by a subsequent letter of the respondent written on 22.7.2000 to the Bar Council indicating that he intended to resume practise immediately by seeking voluntary retirement from the post of Principal. According to the respondent, despite this letter, ignoring the principles of natural justice, the Enrolment Committee of the Bar Council unauthorisedly decided that the respondent shall be deemed to have vacated his office from 22.7.2000.

5. The learned Counsel appearing for the appellant Bar Council submitted that since the election process had already commenced, it could not have been halted by any interim order. It was argued that after the election process was over, it was open to the respondent to challenge result of the election even on the ground that since he had continued to be an Advocate, casual vacancy did not arise. It was submitted that the election process had started much before the filing of this petition and that casual vacancy had occurred as per the deeming fiction under the Rules, on the respondent having ceased to practise as an Advocate by his official communication dated 12th July, 2000 alongwith which his Sanad was deposited with the Bar Council. It was submitted that because the respondent had ceased to practise as an Advocate and had deposited his Sanad, a casual vacancy automatically arose because he stood disqualified for continuing as a member of the Bar Council. The learned Counsel also argued that the

respondent had, having unconditionally withdrawn the Suit in which he failed to obtain interim relief, filed the petition which could not be entertained in view of the withdrawal of the Suit.

5.1 The learned Counsel placed reliance on the provisions of Section 10B of The Advocates Act, Rule 10 of the Rules framed by the Bar Council of India as well as Rules, 10 and 11 of the Conduct of Business Rules framed by the State Bar Council on the topic of filling in casual vacancies. Though the learned Counsel initially questioned the maintainability of the appeal, he did not pursue that aspect at this appellate stage because even the question of maintainability can be decided in the petition itself which is pending for final hearing and the order issuing rule which had the effect of merely admitting the petition was not a judgement against which an appeal could lie. Therefore, this appeal has been argued fully and finally by both the sides only in respect of the order granting interim relief which has the effect of postponing the election.

5.2 The learned Counsel appearing for the appellant in support of his contentions relied upon a decision of the Single Judge of this Court in Ismail Noormohmad Mehta & ors. Vs. State of Gujarat, reported in 37(1) GLR 549 rendered in context of the provisions of Article 243-ZB of the Constitution of India and Sections 2(7)A and 14 of the Gujarat Municipalities Act, 1963 to the effect that since the election process had already commenced by the delimitation of wards, such process cannot be called in question except by an election petition in the manner provided for in Section 14 of the Act and the High Court cannot entertain the petition in view of the bar imposed by Article 243-ZB on the Courts to interfere in electoral matters except by an election petition.

5.3 The decision in Election Officer Vs. Dharamshibhai Muljibhai, reported in 38(1) GLR 589 was cited for its proposition that once the date of election was notified under the Gujarat Panchayats Election Rules and election process has commenced, rejection of nomination paper by the authority cannot be questioned in a Civil Court and the only remedy was to file an election petition under Section 31 of the Gujarat Panchayats Act, 1993, in view of the provisions of Article 243-O of the Constitution of India.

5.4 The decision in Vinodbhai Bikhabhai Harijan Vs. Election Officer & Additional Taluka Development Officer, reported in 39(1) GLR 604 was cited for its proposition

that the Gujarat Panchayats Act provided only for one remedy which was by way of an Election petition to be presented after the election was over and that there was no remedy provided for any intermediate stage. The Court rejected the petition on the ground of availability of the alternative and efficacious remedy under the law.

5.5 The decision of this Court in Akbarbhai Rahimbhai Momin Vs. State of Gujarat, reported in 2000 (2) GLH 172, which related to the voters' list of an Agriculturists' Constituency of a Market Committee was cited to show that this Court had held that a grievance regarding validity of the voters' list can be made under Rule 28 of the Rules framed under the Act, which provided the machinery for determination of an election dispute which touches the validity of an election only after the result of election was declared.

6. The learned Counsel appearing for the respondent strongly contended that the deposit of Sanad by the respondent was not voluntarily done. He submitted that such a deposit of Sanad was merely a temporary arrangement because as already informed by the respondent to the Bar Council by letter dated 21.7.2000, the respondent on his voluntary retirement, from the post of Principal of the law college was to resume his practice. The learned Counsel argued that the Enrolment Committee had no authority to declare a deemed casual vacancy, which could be declared only by the State Bar Council under Rule 10 of the Conduct of Business Rules. He submitted that the functions of the Enrolment Committee contained in Chapter IV of the Conduct of Business Rules were of a limited nature and it was required only to consider the applications for enrolment as Advocates made by persons aspiring to become Advocates. He submitted that Rules 35 to 38, which related to the Enrolment Committee did not empower that Committee to make any declaration that a casual vacancy had occurred. The learned Counsel further argued that the Enrolment Committee did not take into account Rule 10 of the Bar Council of India Rules, which, inter-alia, provided that an elected member of the State Council shall be deemed to have vacated his office if "for any reason whatsoever he ceases to be an Advocate". It was submitted that such a disqualification could be provided only by the Bar Council of India by framing Rule in view of the provisions of Section 10B of The Advocates Act, 1961, which, inter-alia, provided that an elected member of a Bar Council shall be deemed to have vacated his office if he is "otherwise disqualified" under any rule made by the Bar Council of India. It was contended that the State

Bar Council had no power to make any rule by which any disqualification can be imposed. It was therefore argued that Rule 10 of the Conduct of Business Rules framed by the State Bar Council which, inter-alia, provided that a casual vacancy shall be deemed to have occurred in the Bar Council if a member ceases to practise as an Advocate, was beyond the power and authority of the State Bar Council and to the extent that it enlarged the scope of disqualification by virtue of the expression "ceases to practise as an Advocate" incorporated therein as against the expression "for any reason whatsoever he ceases to be an Advocate" occurring in Rule 10 of the Bar Council of India Rules, could not be enforced. It was contended that the very basis adopted by the Enrolment Committee which referred to the said Rule 10 of the Conduct of Business Rules was unwarranted and contrary to the scope of Rule 10 of the Bar Council of India Rules, which alone would operate in the field of such additional disqualifications, in view of the provisions of Section 10B of the said Act. It was submitted that the filing of the Suit by the respondent would not come in the way of the respondent in seeking a remedy before this High Court, because, he had challenged the validity of Rule 10 of the Conduct of Business Rules framed by the State Bar Council, which could not have been done in a suit and further because even according to the Civil Court the Suit itself was not maintainable. It was also submitted that the respondent was not having the resolution with him, which he has challenged in the petition, at the time when he had filed the Suit. It was also contended that the resolution of the Enrolment Committee which had a serious impact on the right of the respondent to continue as elected member of the Bar Council was passed without giving an adequate opportunity of being heard to the respondent and therefore, it was null and void, being violative of the principles of natural justice. The learned Counsel contended that though the respondent had ceased to practise law, it cannot be said that he had ceased to be an Advocate. It is only when name of an Advocate is removed from the State roll that it can be said that a person has ceased to be an Advocate. Mere cessation of practice does not amount to be a person ceasing to be an Advocate. Even deposit of Sanad will not have the effect of removing the name of an Advocate from the State roll. According to the learned Counsel, therefore, since admittedly the name of the Respondent was not struck off or removed from the roll of Advocates, it cannot be said that any casual vacancy had occurred on his intimating to the Bar Council that he had ceased to practise law. It was also submitted that the election process cannot be said to have commenced because though

it was stated in the election notice dated 26.7.2000 that the election of one member will be held as per the time schedule indicated therein under Rule 11 of the Conduct of Business Rules, such election notice was never published. It was submitted that an election notice was required to be published, so that the candidates who may desire to contest the election may come to know about it and obtain the prescribed nomination form with a view to offer their candidature. It was submitted that it was not enough to intimate the remaining members of the Bar Council about the election to be held under Rule 11 and it was incumbent upon the State Bar Council to inform all the prospective candidates who may be desirous of offering their candidature for the purpose.

7. In support of his contentions, the learned Counsel relied upon the following decisions:-

7.1 Decision of the Supreme Court in Indian Council of Legal Aid and Advice etc. Vs. Bar Council of India, reported in AIR 1995 S.C 691 was cited to point out that the Supreme Court has struck down the Rule framed by the Bar Council of India debarring persons aged above 45 years from enrolment as an advocate on the ground that it violated the provisions of equality enshrined under Article 14 of the Constitution of India and that under Section 49(1)(ah) of the Advocates Act, the Bar Council of India can prescribe the conditions subject to which an advocate shall have the right to practise, which must apply at the post-enrolment stage since they are expected to relate to the right to practise and therefore, they cannot operate at the pre-enrolment stage.

7.2 Decision of the Supreme Court in The Vanguard Fire and General Insurance Co.ltd. Vs. M/s. Fraser and Ross and anr. reported in AIR 1960 S.C 971 was cited for the proposition that in view of the qualifying words with which all definitions in statutes generally begin with namely - 'unless there is anything repugnant in the subject or context', the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.

7.3 Decision of the Supreme Court in Council of Homoeopathic System of Medicine, Punjab Vs. Suchintan, reported in AIR 1994 S.C 1761 was cited on the aspect of interpretation. In paragraph 39 of its decision, it was held that Regulations cannot be construed causing violence to the language and that Regulations are plain

enough and are susceptible only to literary interpretation and that they should be construed without introducing any element of ambiguity or absurdity. The observation in 'Maxwell on the Interpretation of Statutes' was cited with approval in para 40, which was read by the learned Counsel with emphasis, that the interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient and that words are not to be construed, contrary to their meanings, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. This is why the learned Counsel submitted that since the word "Advocate" defined in Section 2(1)(a) of the Act means an advocate entered in any roll under the provisions of this Act, even if such an advocate was a "non-practising advocate", he nonetheless would continue to be an advocate so long his name remains on the roll.

7.4 Decision of the Supreme Court in Jitender Tyagi Vs. Delhi Administration and anr., reported in (1989) 4 SCC 653, which also had a bearing on interpretation of statutes was referred to for its proposition that when the language of a statute was plain and simple, the question of ascertaining the intention of the legislature did not arise.

7.5 Decision of the Supreme Court in Bar Council of Delhi and anr. Vs. Surjeet Singh and ors., reported in AIR 1980 S.C 1612 was referred to for its proposition that a mere approval by the Bar Council of India to a rule ultra vires the State Bar Council cannot make the rule valid and on the strength of this decision it was contended that even if Rule 10 of the Conduct of Business Rules framed by the State Bar Council was approved by the Bar Council of India, that would not validate the rule.

7.6 In support of the contention that there was an attempt to victimise the respondent by not even releasing his Sanad despite his informing the Bar Council about his having resumed the practice following resignation from the post of Principal, reference was made to a decision in R.C Sood Vs. High Court of Judicature at Rajasthan, reported in J.T 1998 S.C 4, in order to point out that any deliberate design to bring to a premature end the career of a person which was not bonafide amounted to victimisation and that the fact that the action was by the Bar Council did not preclude any attack on the ground that victimisation was practised.

7.7 Decision in Election Commission of India Through

Secretary Vs. Ashok Kumar and ors., reported in JT 2000 (9) SC 529 was cited to point out that the Supreme Court had held that the High Courts in India are superior Courts of record and that unless expressly or impliedly barred and subject to the appellate or discretionary jurisdiction of Supreme Court, the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers.

8. The relevant provisions of the Act and the Rules which fall for our consideration are set-out hereinbelow:-

10-B of The Advocates Act, 1961:-

"10-B. An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India."

15(1) - A Bar Council may make rules to carry out the purposes of this Chapter:

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:-

- (a) xx
- (b) xxx

(f) the filling of casual vacancies in the Bar Council;

Rule 2(f) & (g), & 10 and 15(1)(f) of The Bar Council of India Rules:

"2. The name of an advocate appearing in the State Roll shall not be on the electoral Roll, if on information received or obtained by the State Bar Council concerned on the basis of which it is satisfied that --

- (a) xxx
- (b) xxx
- (f) He is in full-time service or is in such
part-time business or other vocation not
permitted in the case of practising
advocates by the rules either of the
State Council concerned or the Council:
- (g) He has intimated voluntary suspension of
practice and has not given intimation of
resumption of practice.

"10. An elected member of the State Council
shall be deemed to have vacated his office-

- (a) if he is suspended from practice, or his
name is removed from the roll by an order of a
competent authority, or for any reason whatsoever
he ceases to be an advocate;

Rules 10 & 11 of The Gujarat Bar Council (Constitution
and Conduct of Business), Rules, 1968:-

"10. CASUAL VACANCIES:

A casual vacancy shall be deemed to occur in the
Bar Council if a member dies, resigns his post,
is adjusted as insolvent or lunatic, is suspended
from practice or ceased to practise as an
Advocate."

"11. FILLING OF CASUAL VACANCY:

- (1) To fill casual vacancy among the elected
members of the Bar Council the remaining members
of the Bar Council elect an Advocate thereto in
the manner following:

The Secretary shall on the directions of the
Chairman or in his absence the Vice-Chairman,
invite nominations within fifteen days of the
vacancy having occurred, or in the event of a
vacancy occurring during the vacation of the High
Court, within fifteen days, after the reopening
of the High Court after the vacation. Every
candidate shall be duly proposed and seconded by
a member. In case there is only one candidate,

such candidate shall be declared duly elected by the Chairman on the expiry of the time fixed for such nomination. In case of there being more than one candidate, the election shall take place at the next meeting of the Bar Council. The Election shall be by ballot and the Chairman shall in case of equality of votes, draw the lots there and then and shall declare the result accordingly."

9. The respondent by his letter dated 12th July, 2000 at Annexure "F" to the petition addressed to the Bar Council of Gujarat, stating that he desired to deposit his enrolment certificate with the State Bar Council, deposited his "Original Sanad" to practise law as an Advocate with the Bar Council, with a declaration that he had ceased to practise law and that he was not practising as an Advocate in any Court of India. There cannot be a more unequivocal declaration of having ceased to practise as an Advocate than the one made in the said letter. It even gives the ground for ceasing to practise as an Advocate by stating that this was being done on account of his other engagement. There is, prima-facie, no force in the contention that such deposit of the Sanad with the State Bar Council by the respondent was not voluntary, because, the letter recited that the respondent desired to deposit his Sanad, which expression reflects his own free will. There was no compulsion from the State Bar Council on him to deposit the Sanad. The fact that he had other engagement due to which he was depositing the Sanad as stated in the letter shows that he was intentionally depositing it. Existence of reason of gaining financial advantage elsewhere for working as Principal of a law college for which reason the Sanad was deposited will not make the act of depositing the Sanad not voluntary. The deposit of Sanad by the respondent with the State Bar Council was therefore, prima-facie, a voluntary act on the part of the respondent.

10. The respondent therefore, deposited his Sanad because he had ceased to practise law as an advocate. The contention is that though he ceased to practise law as an Advocate, he did not cease to be an Advocate and therefore, was not disqualified from continuing as the member of the State Bar Council. Section 10-B of the Advocates Act, 1961, inter-alia, provides that elected member of a Bar Council shall be deemed to have vacated his office if he is "otherwise disqualified under any

rule made by the Bar Council of India". Part III of the Rules framed by the Bar Council of India deals with certain matters relating to State Council and Rule 10 thereof, inter-alia, provides that an elected member of the State Council shall be deemed to have vacated his office if (i) he is suspended from practice, or (ii) his name is removed from the roll by order of a competent authority or (iii) for any reason whatsoever he ceases to be an Advocate. Under Rule 2, even if the name of the Advocate appears in the State roll, he shall not be on the electoral roll if the State Bar Council is satisfied that he has intimated voluntary suspension of practice and has not given intimation of resumption of practice or has incurred any disqualification mentioned in the Act or the Rules made therein. Thus, an advocate who intimates voluntarily suspension of practice as an advocate, can no more be on the electoral roll and will be deemed to have vacated his office when he ceases to be an advocate. Under Section 29 of the said Act, Advocates are to be the only recognized class of persons entitled to practice law and right to practice is the essence of being an advocate. It will therefore be contradictory in terms to say that even after depositing the "Sanad" (Certificate of Enrolment) entitling a person to practice as an advocate and a declaration by him that he has ceased to practise law, he should still be treated, during the period of his having ceased to practise law, as an advocate for the purpose of regulating the affairs of the practising advocates by continuing to remain as a member of the Bar Council on a spurious plea that he still is an "advocate" within the meaning of the definition of that term under Section 2(1)(a) of the Act. The submission clearly ignores the governing words of the definition clause "unless the context otherwise requires". Any different view will attribute more substance to a shell after the kernel is taken out from a nut.

11. A Bar Council is empowered to make rules also for the filling of casual vacancies in the Bar Council, inter-alia, under Rule 15(2)(f) of the Rules and the Bar Council of Gujarat has framed Rules thereunder approved by the Bar Council of India, providing for casual vacancies in Rule 10, which lays down that casual vacancy shall be deemed to occur in the Bar Council if (i) a member dies, (ii) resigns his post, (iii) is adjudicated as insolvent or lunatic, (iv) is suspended from practice or (v) has ceased to practise as an advocate. The procedure for filling such vacancy is provided in Rule 11 of the Gujarat Bar Council (Constitution and Conduct of Business) Rules, 1968 and as provided therein, the remaining members elect an advocate thereto. Such

election takes place at the next meeting of the Bar Council that may be held after the time fixed for the nomination expires. If mere continuance of the name on the State roll notwithstanding the member of the Bar Council ceasing to practise law as an Advocate is taken to entitle him to continue as a member, even a member suspended from practising can claim to continue as a member on the ground that his name is not yet removed from the roll, leading to a startling situation. A given Bar Council can come to be manned by suspended, non-practising persons and also those who have deposited their Sanads on joining judiciary or other full-time jobs, thereby allowing non-professionals to regulate the professionals.

12. The Supreme Court in Baldev Singh Dhingra Vs. Madan Lal Gupta reported in (1999) 2 SCC 745, although in a different context of disciplinary action being taken by the Bar Council against a person who was removed from judiciary for the misconduct that he had committed while in service, held that during the time he had suspended his practice while in judiciary, he could not be said to be acting as an Advocate under the Act. The person concerned had on his appointment to judiciary, ceased to practise and surrendered his certificate of enrolment in original which was returned to him on resumption of practice. It was held that if a person has already surrendered his licence to practise and joined full-time service of the judiciary, he cannot be treated to be an advocate on the roll of the State Bar Council at the time when he is alleged to have committed the misconduct. In another decision also in a different context of appointment of District Judges under Article 233(2) of the Constitution [Sushma Suri Vs. Government of National Capital Territory of Delhi - reported in (1999) 1 SCC 330], it was observed in paragraph 6 of the judgement that if a person on being enrolled as Advocate ceases to practise law and takes up an employment, such a person can by no stretch of imagination be termed as an Advocate. In context of Rule 49 of the Bar Council of India Rules, the Supreme Court, in paragraph 10 of the judgement, held that the test is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a court of law as an advocate.

13. These are therefore the reasons for our prima-facie view that no interim relief can be validly granted for stopping the election, the result of which ofcourse the respondent can challenge under the mechanism provided for that purpose. If the learned Single Judge

persuades himself to a different view at the final hearing of the petition, that will entirely be within his powers since the present opinion is only in context of the interim relief. There shall be no interim relief. The writ petition may however be finally heard as scheduled by the learned Single Judge. The contention that the nominations are not invited from the prospective candidates and therefore the stage of inviting nominations may be stayed, cannot be accepted because the election process has already started and the question whether it was necessary to publish the notice for the benefit of the candidates or not itself is a matter in dispute, which may be decided in the petition which is pending. Other contentions can be raised when it is decided.

14. Since the question of interim relief has been fully and finally argued and dealt with and the rest can wait till the petition is heard, this appeal is allowed by vacating the interim relief granted by the learned Single Judge under the impugned order. Needless to say that any outcome of the election will be subject to the orders that may be made in the main petition. There shall be no order as to costs.

At this stage, the learned Counsel for the respondent prays for continuing the interim relief for six weeks' to enable the respondent to challenge this order before the higher forum. Having regard to the facts and circumstances of the case this request is rejected.

*/Mohandas